

Minutes of the Veneta Planning Commission & City Council

Joint Meeting - January 9, 2006

Planning

Commission Present: James Dean, Vice-Chair; Jim Bruvold, Len Goodwin, and Lily Rees

Council Present: Mayor T. J. Brooker, Thomas Cotter (arrived at 5:37 p.m.), Darrell Carman, and Marion Esty

Absent: Planning Commission Chairman James Eagle Eye and City Councilor Fred Miller

Others: Brian Issa, Building & Planning Official; Margaret Boutell, Community Services Director; Ric Ingham, City Administrator; Sheryl Hackett, City Recorder; David Cady, Hayden Homes; Duncan Brown; John Van Staveren; J. Douglas Gless; Patrick Thompson; Joan Mariner; William Wright; Mona Linstromberg; Cathy Coulson-Keegan; Kathy Kirsh; Perry Burdon; Craig Harbison; and Jeneca Jones, West Lane News

1. CALL TO ORDER

- a. Acting Planning Commission Chairperson James Dean called the Veneta Planning Commission to order at 5:35 p.m.
- b. Mayor Brooker called the Veneta City Council to order at 5:35 p.m.

2. PUBLIC HEARING - SOUTHWEST AREA PLAN (SWAP) - (V-12-05) Request for a variance to the Veneta Wetland Protection Ordinance, Veneta Municipal Code -Chapter 18.10, Section 18.10.060, Variances (Assessor's map 18-06-01-00, tax lots 1600, 1602, 1605, 1606, and 1607)

- a. Open Hearing: James Dean opened the public hearing at 5:36 p.m.
- b. Conflicts of Interest or Ex-parte Contacts: None declared
- c. Staff Report (Brian Issa)

Brian asked the Planning Commission and Council to refer to the SWAP wetlands impact map labeled 10.19.05.

The variance is for the Southwest Area Plan which was approved by the Veneta Planning Commission and will be submitted to the City Council for approval at a future meeting. The site has a little over seven (7) acres of wetlands and as a condition of approval a wetland variance is required.

(Thomas Cotter arrived at 5:37 p.m.)

Brian pointed out on the map that the wetlands that will be impacted are shown in red on the southeast corner of the site within the proposed right-of-way for Perkins Road, a small area (0.004 acres) located below the largest area of wetlands near the central portion of the site, and another small area to be filled near the long cul-de-sac on the west portion of the site for rerouting the drainage channel for a distance of 50'.

On this date staff received an analysis of alternative alignments for Perkins Road from the applicant and public comments from the Neighbors for Responsible Growth (N4RG). Staff recommends that after the public hearing, the record be held open an additional 7 days after which the applicant will be given an opportunity to rebut any new information. Staff will then prepare revised findings and deliberations can take place at a meeting on January 23, 2006.

The Planning Commission and Council were provided with copies of the alternative designs submitted by Hayden Homes and the letter from Neighbors 4 Responsible Growth which were received by the City on January 9, 2006.

d. Public Testimony:

David Cady; Hayden Homes; 2464 S. W. Glacier Place, Redmond, OR 97756
Mr. Cady said he represents Hayden Homes, the developer and builder. He said other professional project staff are present to offer testimony and answer questions.

Mr. Cady said his first request would be to leave the record open 7 days and then be given the opportunity to provide rebuttal. He said they would prefer having the City Council take action on their plan amendments and have the wetland variance considered concurrently. He said they will waive the 120-day rule accordingly to allow that to happen.

Mr. Cady reviewed the current plan and it's impact on the resources identified on the site. He said the current plan impacts about 94% of those resources. Mr. Cady said Hayden Homes held two neighborhood meetings and worked with staff to redesign the Southwest Area Plan to minimize the impact on the natural resources by changing the street pattern, creating more usable park space, making park and open spaces contiguous, and create buffers around the wetlands. The revised plan impacts less than .20 acres of wetlands and creates contiguous areas of open space to provide migratory paths for animals.

Mr. Cady said the variance involves three wetlands:

(1) Southeast corner: The development requires two points of access and to avoid the wetlands on the southeast corner of the site altogether they would have to create a crossing that would eliminate the connectivity that provides the migratory paths and preserves a very low-value isolated wetland on the southeast corner of the site. He said the public need is best met by on-site mitigation by incorporating the low value wetland into a larger resource. This mitigation will improve the water quality and habitat value of the area. They also feel public need is best met by keeping most of Perkins Road inside the Urban Growth Boundary.

(2) Central part of the site: Mr. Cady said they are proposing to do on-site mitigation of a small isolated area of wetlands, 190 square feet in size, that is located in the central part of the site. Although that area could be preserved, the

wetlands would be located on the sideyards of two lots. They felt public need would be best met by incorporating it into the larger wetlands which would be under the City's jurisdiction.

(3) 50 feet along the cul-de-sac: They propose to temporarily impact an area of wetlands near the proposed cul-de-sac by rerouting a drainage channel to create one, rather than two crossings under the right-of-way. He said the public need is better served by one crossing because of long term maintenance. He also said public need is supported because it allows for a buffer to be retained around the wetlands.

Mr. Cady said the wetlands specialists can provide more information about the low value of the wetlands on the southeast corner of the site. He said Neighbors 4 Responsible Growth suggested a bridge which he feels would have a greater adverse impact on the wetlands because it would not require additional on-site mitigation and the bridge would block sunlight.

Mr. Cady said the proposed on-site mitigation does exactly what the City's wetland protection ordinances intended, to take away the adverse impacts and ensure long term protection of the wetlands.

James Douglas Gless; 9120 S. W. Pioneer Court, Suite B; Wilsonville, OR 97070

Mr. Gless said he is the hydrologist and engineering geologist for the project. He said his primary responsibility was to look at the slope stability and groundwater as it relates to the wetlands. He said the westerly portion of the site is composed of hills with soils made up of gravel, sand, and silt. Rain that falls on the slope seeps into the ground and flows downhill to the east. The majority of the site is made up of fine clays and silts with the exception of one large area of wetlands which is made up of more sandy soil. A spring is present as a result of groundwater flowing through the sandy material and discharging into the wetland area. Both subsurface and surface flow from ditches contribute to the wetlands. Mr. Gless said throughout the flat area the ground water is very shallow, 9 to 10 feet deep.

In response to a question from Jim Bruvold, Mr. Gless said the geotechnical report addresses soil stability which he believes can be maintained through the design process. He said the risk of slope instability is very low.

Duncan Brown, OTAK; 333 Upper Terrace Drive; Bend, OR 97702

Mr. Brown said he is a land use planner representing the applicant. He said the variance criteria requires the determination that public need outweighs adverse impacts. He said adverse impacts can include non-wetland impacts such as environmental and maintenance issues for the City. With regard to the impact on the wetlands by rerouting the drainage, he said the rerouting could result in less maintenance for the City. With regard to the wetlands on the southeast corner to the property, Mr. Brown said bridging the wetlands for the extension of Perkins Road would result in higher maintenance costs.

Mr. Brown said the wetlands experts will provide greater detail about the quality and source of the wetlands. He said the construction of Perkins Road would cut off the water source for the wetlands which is surface runoff from the adjacent property. He said the Division of State Lands (DSL) definition of mitigation means no adverse impacts or loss of wetlands. The applicant proposes on-site mitigation; therefore, no adverse impact will result. If the wetlands are not filled, excavated, or graded then mitigation is not called for and the wetlands would be lost because the water source would be cut off; therefore, by not filling the wetlands adverse impacts will result. Mr. Duncan said the City's adopted plan would require full mitigation of the wetlands.

In response to a question from Darrell Carman, Mr. Brown said the applicant is proposing mitigating all the adverse impacts through the DSL process. He said the mitigation sites have not yet been shown on the map. He said the mitigation will be done by enhancing the riparian area along the linear drainage way.

John VanStavern, 9450 S. W. Commerce Circle; Wilsonville, OR 97070

Mr. VanStavern said what Hayden Homes is proposing is common practice. The intent of the State and Federal regulations is to minimize and mitigate the impact to wetlands. He said he came into the process late but was pleased to see that they have avoided most of the wetlands. He said he feels public need is better served by mitigating the impacted wetlands on-site. He said he has been in the business 18 years and that the wetlands on the southeast corner of the site is of very low quality with no aquatic habitat, no hydrology source, and adjacent to housing development. He said the wetland function will be even lower when the road is constructed and would be better served by mitigation in the central part of the site which has a hydrological source. He said the City has the opportunity to enhance wetland resources and riparian areas on the site.

In response to a question from Thomas Cotter, Mr. VanStavern said when doing a wetland quality assessment two methodologies are used, one for Oregon and one used nationwide. He said both of those methodologies would show the wetlands on the southeast corner to be of low quality because there is no vegetative structure, no recreational value, and no aesthetics. He said all those qualities could be achieved through on-site mitigation on the central part of the site. He said mitigated wetlands are very strictly monitored for a period of five years.

In response to a question from Thomas Cotter, Brian said the extension of Perkins Road is in the Transportation System Plan. He said the proposed design keeps most of the roadway within the City's Urban Growth Boundary.

Dana Craft; 101 S. W. Main Street; Portland, OR 97204

Ms. Craft said the City's ordinance considers all wetlands significant. She said the criteria use by a wetland biologist is the difference between low and high quality wetlands. She said the City's criteria requires a balance of the public need for filling the wetlands and the adverse impact caused by the fill and decide which wins. She said the City will get more wetlands through mitigation because mitigation has to be done at a ratio of 1.5:2. She said looking at the big picture

the adverse impact is minimal. She said the alternative to the street crossing is to build the road outside the City's Urban Growth Boundary which is not preferred under the statewide planning goals and removes the incentive for enhancing the wetlands elsewhere on the site. She said the small wetland that is more centrally located would end up as part of someone's side yard if not mitigated. She said the preferred plan could be subject to appeal; however, she feels it is the better alternative because of the opportunity to enhance wetlands on the site.

Joan Mariner; 25712 Cochran Court; Veneta, OR

Ms. Mariner provided written comments for the record. She said Neighbors 4 Responsible Growth does not argue the public need for the temporary impact to wetlands resulting from the placement of open bottom boxed culverts for road crossings or the extension of utilities under wetlands during the dry season; however, they do not endorse it. She said they do argue that there is no public need to fill the delineated significant wetlands or for the rerouting of 50 feet of natural drainage as proposed by the applicant.

She asked the Planning Commission and Council to consider the fact the wetland ordinance permits the removal of non-native or invasive plant species and maintaining or improving natural functions and values of wetlands; therefore, the developer could enhance the existing wetland instead of filling it. She also asked them to consider that the wetlands have already been deemed locally significant and are subject to the protection of the City's wetland code. She said the City's variance criteria requires an analysis of the potential impact to the wetlands, not a redefining of the already established significance of them. She said the applicant has argued that the wetlands in the southeast corner of the property need to be filled to extend Perkins Road as shown on the TSP; however, the extension is very problematic. She said until the City determines where Perkins Road can be best extended into the development the Planning Commission and Council do not have enough information to approve the variance.

Kathy Kirsh; 24690 Bolton Hill Road; Veneta, OR

Ms. Kirsh submitted written comments for the record. She said Veneta's Wetland protection ordinance lists three prohibited activities within a wetland; (1) new development or expansion of existing development, (2) channelizing or straightening natural drainage ways; and (3) filling, grading, or excavating. She said the ordinance also states that wetlands are also subject to DSL standards of approval but when there is a difference, the more restrictive regulations shall apply. She said the City should not delegate responsibility.

Ms. Kirsh said the applicant is seeking relief under the provision that a variance may be granted when the Planning Commission and Council jointly determine that public need outweighs potential adverse impacts. She said the staff report states that public need is the extension of Perkins Road; however, she said that can be accomplished without filling the wetlands by spanning it with a bridge. She said cost is not part of the criteria. She said the applicant has also submitted another alternative that should be considered, extending Perkins Road further west to avoid the wetlands. She said until the applicant provides more site

specific evaluation, the Planning Commission and Council do not have enough information to approve the variance.

Mona Linstromberg; 87140 Territorial Road; Veneta, OR

Ms. Linstromberg provided written comments and photographs for the record. She said the public has been told countless times by the City that wetlands must be mitigated through a wetland mitigation bank and cannot be mitigated on-site. She said Duncan Brown testified that wetlands will be mitigated on-site but he did not show specifically where on-site that will be done. She said the applicant has also stated that the wetlands are low quality; however, they did not mention the function the wetland serves for water quality and flood control. She said the property has a lot of flooding and the wetlands plays a big part in flood control.

She said the applicant has fallen short of establishing public need for filling the wetlands. She said there are alternatives to filling the wetlands. She said the alternatives may be more costly to the developer, but that is not applicable criteria. She said the fill in Perkins Country Estates has resulted in cracked foundations and the necessity for sump pumps. She said the function wetlands perform is often flood control. She said the applicant's assertion that there is no drainage way or connection to other wetlands has not been substantiated by any evidence. She said the source may be subterranean. She said the wetlands has been delineated as significant; therefore there must be a basis for that.

Ms. Linstromberg said the applicant's rationale for addressing potential adverse impacts to wetlands is fatally flawed and the adverse impacts have not been adequately addressed under the code.

Perry Burdon; 24733 Dogwood Lane; Veneta, OR

Mr. Burdon read and submitted for the record a letter from Devon Trottier which he also signed. The letter stated that the first and primary responsibility of the Commission and Council is to the citizens of Veneta who already reside in and around the City and they should also include consideration of non human species. The letter states that the wetlands not only function as a filtration system for water quality and for flood control but to provide homes for wildlife. She said the cost of losing wetland habitat must be measured by more than money. She asked the Commission and Council to consider the effect their decision will have on future generations and on wildlife.

Perry Burdon asked if slope stability has been taken into consideration. He also stated that he did not feel it is democratic to allow the applicant more time to speak than the citizens. He said public need should be measured by more than traffic and money. He said current land use planning is mindless and geared for making large corporations wealthy and destroying the air and water quality in and around Veneta. He said it has more to do with making money and economic development than preserving the quality of the environment. He said increased development contributes to air and water pollution. He said the citizens are not happy with what is going on.

Craig Harbison; 87140 Territorial Road; Veneta, OR

Mr. Harbison presented written comments for the record. He said Veneta's Wetland Protection Ordinance is intended to protect and preserve water quality, preserve fish and wildlife habitat, provide flood storage capacity, provide sediment trapping, and to preserve open space. He said filling wetlands is prohibited unless it is shown that the public need outweighs adverse impacts in or near significant wetlands. He said the applicant has failed to adequately address possible adverse impacts or to show that public need outweighs adverse impacts. He said the wetlands can be avoided or spanned. He said making a case to balance public need and adverse impacts is not the same as determining that public need outweighs adverse impacts. He said the applicant's basic premise of no adverse impact is flawed. He said the recent rainfall was not a ten year storm but the property was wet and flooded. He said Veneta has a history of flooding. He said the drainage in the Oak Island and Cherry Street area was rechannelized to the detriment of the property owners in the area. He said problems have also occurred in Perkins Country Estates. Mr. Harbison said he and the Neighbors for Responsible Growth request the Planning Commission and City Council deny the applicants request to fill or reroute the wetlands. He also requested that the record remain open and that all documents, maps, comments, and photos presented be entered into the record.

e. Questions from the Planning Commission and City Council:

Staff was asked to provide a summary. In response, Brian said the quality of the wetlands has been raised as an issue. He said the City has taken the Safe Harbor approach to wetlands; therefore, quality is not valid justification for filling the wetlands. He said the applicant has approached the criteria of public need by pointing out that adverse impact is not just relevant to the wetlands but to the long term maintenance for the City. The applicant has also interpreted public need to include not only the street improvements but the on-site enhancement of the other wetlands on-site. He said the hydrologist and wetland consultant said the hydrologic source of the wetlands on the southeast corner of the site is surface flow from the road, adjacent property, and precipitation. He said the public expressed concerns about the necessity of that wetlands for flood control. He said the idea of on-site mitigation is new to staff; therefore, he has a question about who would be responsible for the mitigation and how it would be monitored. He said he cannot recall if other applicants were required to do off-site mitigation.

Len Goodwin said he understands that hypothetically if the applicant replaces the wetlands with other wetlands on-site that have a higher function and value, the applicant is asserting that the public need would be weighed against the mitigation resulting in no net adverse impact. In response, Brian said he understands the Division of State Lands mitigation process to mean no adverse impact.

Len Goodwin asked the applicant to clarify the mitigation process during his rebuttal.

David Cady said the mitigation process is monitored by the Division of State Lands (DSL) and requires the developer to post a five (5) year warranty bond to

assure the wetlands survive. He said DSL can require the developer to extend that bond if the mitigation does not meet performance standards. In response to questions, Mr. Cady said the temporary impact to the wetlands will be caused from rerouting 50' of the drainage. He said the natural drainage cannot be determined because it has been altered numerous times over the years. He said the mitigation and enhancement on-site is more costly than rerouting Perkins to avoid the wetlands; however, they feel it will provide the greatest benefit. He said the only alternative that is not feasible is constructing a bridge. He said a bridge would blanket 80% of the wetlands, reducing its function and value by removing sunlight.

Mr. Cady said the area has more than 7.5 acres of wetlands and they are proposing permanent impact on only 0.018 acres. They are also proposing to create 30 acres of open space versus the 20 acres of open space in the current plan. He said the flooding and engineering issues will be addressed at the subdivision level.

He said public need and benefit is established in the Comprehensive Plan goals which the plan adopted by the City was based on. He said they have added another benefit by proposing a low impact stormwater system with bio-storm management which minimizes the use of traditional detention facilities. He said their proposed plan takes a more difficult path at a higher cost; however, he said it has a longer term commitment to the natural resources.

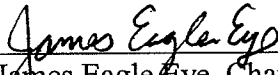
In response to a question from Len Goodwin about what the net impact to the wetlands would be, David Cady said it would be zero because they would be mitigating the small isolated wetlands on site which would create more wetlands. He said the wetlands created by on-site mitigation would be contiguous to the larger areas of existing wetlands along the stream, creating more opportunity for water storage, better water quality, and recreational benefit, resulting in the zero impact.

- f. Close of Public Hearing: James Dean closed the public hearing at 6:52 p.m.
- g. Deliberation and Decision: The applicant requested that the record be held open longer than the seven days to allow the application to be considered in tandem with their application for the Southwest Area Plan amendments. Brian restated the applicant's request to extend the 120-day rule.

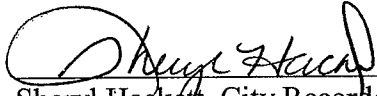
MOTION: Len Goodwin made a motion to hold the record open until February 7, 2006, allow the applicant until February 14, 2006 for rebuttal, and have the City Council and Planning Commission deliberate and make a decision on February 27, 2006. Jim Bruvold seconded the motion which passed with a vote of 8-0.

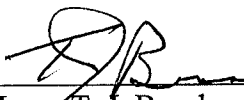
3. **ADJOURN**

James Dean adjourned the Planning Commission at 6:57 p.m. Mayor Brooker adjourned the City Council from the joint meeting at 6:57 p.m.

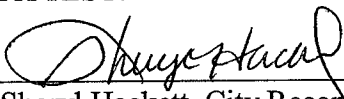

James Eagle Eye, Chairman
Veneta Planning Commission

ATTEST:


Sheryl Hackett, City Recorder


Mayor T. J. Brooker
Veneta City Council

ATTEST:


Sheryl Hackett, City Recorder
(minutes prepared by slhackett)